

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

STEVEN L. BALISTRERI,

Plaintiff,

v.

DR. GLEN HEINZL, *et al.*,

Defendants.

ORDER

15-cv-247-slc

In a March 9, 2016 screening order, the court granted plaintiff Steven L. Balistreri leave to proceed against a number of Wisconsin Department Correction Employees based on Balistreri's claims of constitutionally inadequate medical treatment. The court also allowed Balistreri to proceed against Dr. Glen Heinzl—who is not a state employee—on a constitutional claim and a state law medical negligence claim for allegedly prescribing grossly ineffective pain medications. *See* dkt. 18 at 12 & 14.

On April 27, 2016, Dr. Heinzl, by counsel, moved for a stay of proceedings against him and an order compelling Balistreri to mediate his state law claim against Dr. Heinzl as required by Chapter 655, Wis. Stats. *See* dkt. 28 at 1. At the May 18, 2016, telephonic preliminary pretrial conference, the court discussed Dr. Heinzl's motion with Balistreri, and it granted Balistreri's request to think about what he wanted to do and then get back to the court. The court gave Balistreri until June 1, 2016 to report his decision. *See* dkt. 34 at 3. June 1, 2016 came and went with no word from Balistreri, so Dr. Heinzl's attorney filed a letter dated June 8, 2016 in which he asked the court to construe Balistreri's silence as a constructive election to drop from this federal lawsuit his state law malpractice claim against Dr. Heinzl. *See* dkt. 36.

This is the only logical conclusion to draw in this case. First, Balistreri indicated during the May 18, 2016 telephonic conference that he was leaning in this direction. Second, Balistreri filed nothing by his June 1, 2016 deadline. Third, Balistreri has not responded to Dr. Heinzl's letter. Fourth, this is the most efficient outcome for Balistreri, since it does not require him to put his entire federal lawsuit on hold while he mediates this single claim against a single defendant.

Accordingly, it is ORDERED that defendant Dr. Glen Heinzl's motion, dkt. 28 is GRANTED IN PART, and plaintiff Steven L. Balistreri's state law medical negligence claim against Dr. Heinzl claim is DISMISSED WITHOUT PREJUDICE so that plaintiff may comply with the requirements of Chapter 655, Wis. Stats.

Entered this 14th day of June 2016.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge